CF0000060238

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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 2417 /1998

MEMORANDUM OF CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

APPELLANT IN JAIL ... LALLU @ TRIVENI, Son of Jhallu Palnika, aged about 30 years, Carpenter Resident of Pateratola, Police Station Gorella, District Bilaspur, M.P.

16585
Filed on 17-10-98
by Shri V.K. Tamrey
..... Advocate
Rlo. A.R.

VERSUS

RESPONDENT ... STATE OF MADHYA PRADESH through Police Station Pasan, District-Bilaspur, M.P.

CONVICTION PUNISHMENT

XI-HC-22

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आदेश पत्रक

मामला क्रमांक Cr. App. 241/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

22.03.2006

Shri Rakesh Pandey, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Ravindra Agarwal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

Accused/appellant Lallu alias Triveni has preferred this appeal questioning the legality & correctness of the judgment of conviction & order of sentence dated 17.9.1998 passed by learned 4th Additional Sessions Judge, Bilaspur, Link Pendra Road in S.T. No.482/97 whereby learned 4th Additional Sessions Judge after holding the accused guilty for committing murder of his wife Urmila Bai convicted him under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. However, looking to the poverty condition of the accused no fine was imposed upon him.

The prosecution case, in brief, is that Amol Sai (PW-4), maternal uncle of deceased Urmila Bai, lodged the report in the Police Station Pasaan on 24.8.1997 to the effect that Urmila Bai was his sister's daughter and she was married to the accused in the year 1985-86. In the month of June, accused/appellant along with his wife and children

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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started living in his in-laws house situated at Village Kumhari-darri. On 23.8.1997 in between 11-12 a.m. when he was about to take meal, he heard the screams of his niece Urmila "*come, I am being attacked*'. On hearing screams, he rushed towards his brother Dhansai's house and saw that Urmila was weeping and saying "*save-save*". Her husband i.e. accused/appellant was holding axe in his hand and attacking Urmila on her neck with the axe, as a result of which blood was oozing out. Accused again assaulted Urmila on her neck. He immediately jumped and caught accused Triveni and shouted that accused Triveni Prasad is committing murder of his niece Urmila with the axe. On hearing his shout, his son Sukhnandan, his niece Manglibai, his wife Sonkunwar, his daughter Kaushalya Bai and villagers namely Vishambhar Singh, Vishnu Singh, Kewalram, Shivnarayan & Sarpanch Inderpal Singh came.

Receiving this report, Shri N.K. Pulsatya Station House Officer, Police Station Pasaan registered the F.I.R. (Ex.P-4) for commission of offence under Section 307 of the Indian Penal Code and left for the scene of occurrence. While in police custody, accused gave memorandum (Ex.P-1) and in pursuance of that the axe i.e. weapon of offence was taken into possession under Ex.P-2. He also took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-3. Urmila Bai was sent to Civil Dispensary, Pendra for treatment, where Dr. R.C. Mishra (PW-9) at the request of the Station House Officer, Police Station Pasaan (Ex.P-10) recorded the dying declaration (Ex.P-5) of Urmila Bai. Dr. Mishra (PW-9) also

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examined the injuries of Urmila Bai and prepared the report Ex.P-9. Clothes of Urmila Bai were taken into possession under Ex.P-6. While taking treatment in the hospital, Urmila Bai succumbed to the injuries on 6.9.1997, therefore, a merg intimation (Ex.P-8) of the same was given to the Police Station Pendra, based on which the offence was converted into 302 of the IPC. Panchnama (Ex.P-17) of the body of deceased Urmila was prepared by the Station House Officer after giving notice Ex.p-16 to the Panchas. On the request of Station House Officer Ex.P-18, postmortem of the body of Urmila Bai was conducted by Dr. R.C. Mishra (PW-9) and he prepared the report Ex.P-12. Site plan (Ex.P-20) was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate First Class, Pendra Road who in turn committed the case to learned Sessions Judge, Bilaspur from where learned 4th Additional Sessions Judge, Bilaspur Link Pendra Road received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/appellant examined twelve witnesses. Statement of accused/appellant was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime. He has further stated that he has not murdered his wife and at the time of incident his mental condition was not proper.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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Learned Additional Sessions Judge after conclusion of trial and hearing the counsel of respective parties convicted and sentenced the accused in the manner as mentioned in Para-1 of this judgment.

We have heard Shri Rakesh Pandey, Advocate for accused/appellant & Shri U.N.S. Deo, Addl. Public Prosecutor with Shri Ravindra Agarwal, Panel Lawyer for the State/respondent.

At the outset, learned counsel for the accused/appellant submitted that the prosecution has not been able to establish that the accused assaulted his wife with the intention to cause her death. He further submitted that at the time of incident the accused was not maintaining proper mental condition and moreover, from the evidence of doctor (PW-9) it is established that the deceased died on account of infection in the injuries and septicaemia. He further argued that the doctor has further stated that the injury on the neck was not sufficient to cause death in ordinary course, therefore, the offence under Section 302 of the I.P.C. was not made out against the accused.

On the other hand, Shri Deo, Additional Public Prosecutor with Shri Agarwal, Panel Lawyer for the State supported the judgment of trial Court.

As far as the involvement of accused/appellant in the crime in question is concerned, PW-4 Amol Sai is a person who witnessed the crime and is the maternal uncle of the deceased. This witness has clearly stated in his evidence that he returned to his house at about 10-11 a.m. and when he sat for taking meal, he heard the screams of Urmila from the house of his brother Dhansai. Urmila was crying "*come,*

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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I am being attacked'. He left the meal, rushed towards the house of his brother Dhansai and saw that the accused was attacking Urmila with the axe. He attacked Urmila twice in his vision. Blood was oozing out of the injuries. He caught the accused and started shouting on which his son Sukhnandan and others came and thereafter, the Sarpanch was also called. Urmila & accused were taken to the Police Station. The Station House Officer said that Urmila be taken to the Civil Dispensary, Pendra Road. He lodged the report Ex.P-4. In the cross-examination of this witness, the defence has not been able to elicit any circumstance on account of which the evidence of this witness can be held to be untrustworthy.

As far as the argument of learned counsel for the accused/appellant that at the time of incident the mental condition of the accused was not perfect, therefore, he is entitled for the benefit of Section 84 of the I.P.C. is concerned, we have perused the judgment of the trial court and in paragraph 19 of the judgment of the trial court has rightly rejected this defence. In order to attract the provisions of Section 84 of the IPC the onus is on the accused to establish that at the time of commission of crime he was suffering from unsoundness of mind. Section 84 of the IPC contemplates that *"nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."* Therefore, to seek exemption provided in Section 84 the accused was required to establish that at the time of commission of crime, by reason of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

unsoundness of mind, he was incapable of knowing the nature of act, or that he is doing what is either wrong or contrary to law.

In the first instance, there is no material on record to show that at the time of committing the crime in question the accused was suffering from unsoundness of mind. Even from the cross-examination of the prosecution witnesses, the defence has not been able to establish the fact regarding unsoundness of mind. Therefore, the argument advanced by learned counsel for the accused/appellant is devoid of any merit and accused is not entitled for any benefit under Section 84 of the I.P.C.

As far as the question of intention to cause death of Urmila Bai is concerned, Dr. R.C. Mishra (PW-9), who examined the injuries of Urmila Bai, has stated in his evidence that there were four incised wounds on neck, there was injury on cervical region, C-2 vertebra was found fractured. In Para 8 he has stated that in his opinion Urmila Bai died as a result of syncope on account of infection in the neck injuries and septicemia. In cross-examination this witness has stated that had Urmila Bai's injuries operated upon, there was possibility of her survival, in fact, on account of septicaemia and infection deceased died. The injuries on the neck were not sufficient in the ordinary course to cause death. It is also admitted fact that injuries were inflicted on 23.8.1997 and Urmila Bai died in the hospital while taking treatment on 6.9.1997 i.e. after 14 days of the incident. Therefore, the intention to cause death is missing and moreover, the injuries were not sufficient in the ordinary course to cause death, as such the finding of the trial court

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convicting the accused/appellant under Section 302 of the I.P.C. and sentencing him for that offence cannot be sustained. On the facts as the injuries were grievous in nature, we are of the considered opinion that the offence against the accused/appellant under Section 326 of the I.P.C. is made out.

In the result, the appeal is partly succeeds. Conviction and sentence imposed on appellant Lallu alias Triveni under Section 302 of the Cr.P.C. are hereby set aside, he is acquitted of that charge and instead thereof he is convicted for commission of offence punishable under Section 326 of the Indian Penal Code and sentenced to undergo R.I. for 10 years.

Appellant Lallu alia Triveni will be entitled for set-off for the period during which he remained in custody.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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